



September 1, 2000

Mr. Marcus W. Norris
City Attorney
Legal Department
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2000-3410

Dear Mr. Norris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138997.

The City of Amarillo (the "city") received a request for "documents relating to any disciplinary action or reprimands against Amarillo Police Department personnel or other city personnel involved in [a particular] wrongful arrest." You claim that responsive documents relating to two police officers and to a dispatcher, generated as a result of an internal affairs investigation, are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102 of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." The protection of section 552.102 is the same as that of the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld from the public under the common law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). However, because the work behavior of an employee and the conditions for his continued employment are matters of legitimate public interest, the common law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance. See Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). We

therefore conclude that the responsive information concerning the dispatcher is not excluded under section 552.101 in conjunction with a right of privacy, or under section 552.102.

Section 552.101 also encompasses information protected by other statutes. You assert that responsive information related to the subject police officers is confidential under section 143.089 of the Local Government Code. In relevant part that statute reads:

- (a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:
 - (1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;
 - (2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and
 - (3) the periodic evaluation of the fire fighter or police officer by a supervisor.
- (b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.
- (c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:
 - (1) the disciplinary action was taken without just cause; or
 - (2) the charge of misconduct was not supported by sufficient evidence.
- (g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Section (a)(2) of this statute requires information that relates to misconduct by a police officer that resulted in disciplinary action taken in accordance with chapter 143 of the Local Government Code, to be included in the officer's personnel file, and thus to be subject to public disclosure. Disciplinary actions specified under chapter 143 of the Local Government Code are: removal, suspension, demotion, and uncompensated duty. Local Gov't Code §§ 143.051, 143.054, 143.055. You inform this office that the subject officers received letters of reprimand. You indicate that no further action was taken against these officers. We conclude that, in this case, no "disciplinary action," as that term is contemplated under chapter 143 of the Local Government Code, resulted from the complaint.

Because the complaints against the police officers did not result in disciplinary actions, these complaint files cannot be held in the officers' section 143.089(a) personnel files. Local Gov't Code § 143.089(b), (c)(2). The information is therefore maintained pursuant to section 143.089(g) of the Local Government Code. The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. (*City of San Antonio*, 851 S.W.2d at 946 (in construing section 143.089 the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). Having reviewed the submitted information, we agree that you must withhold the officers' compliant files under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

In conclusion, the information relating to the police officers is made confidential by statute and must be withheld under section 552.101 of the Government Code. The information relating to the dispatcher is not made confidential by statute, nor by common law privacy, and must therefore be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

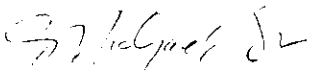
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 138997

Encl Submitted documents

cc: Ms. Diane Dotson
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